
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

DR. LIMIN SHE,

Plaintiff,

v.

HEALTH LINE INTERNATIONAL CORP.,
a Wyoming company, IMSI MEDICAL INC.,
JOEL FAULKNER, an individual, ELLIOT
FAULKNER, an individual, AARON
FAULKNER, an individual, GLORIA
FAULKNER, an individual, and ESTRELLA
MEDICAL, LLC, a Utah company,

Defendants.

MEMORANDUM DECISION AND
ORDER DENYING MOTION TO
REMOVE ATTORNEYS' EYES ONLY
DESIGNATION

Case No. 2:18-cv-00681-TC-BCW

District Judge Tena Campbell

Magistrate Judge Brooke C. Wells

This matter was referred to the undersigned by District Judge Tena Campbell pursuant to 28 U.S.C. § 636(b)(1)(A).¹ Pending before the court is Plaintiff's Motion to Remove Attorneys' Eyes Only Designation.² Plaintiff seeks to remove the "Attorneys' Eyes Only" designation from high level financial statements produced by Defendants in discovery. Pursuant to DUCivR 7-1(f), the court determined oral argument is not necessary. Having considered the parties' arguments, memoranda and relevant case law, the court finds the requested information warrants the designated protection at this time. Accordingly, the motion is DENIED.

BACKGROUND

This action arises from a dispute between the shareholders of Health Line International Corp. (HLIC), Joel Faulkner (Faulkner) and Dr. Lim She (Dr. She). HLIC develops, manufactures, and distributes medical devices in the United States, China and other parts of the

¹ ECF No. 83.

² ECF No. 82.

world.³ In 2005, Faulkner and Dr. She created HLIC (a Wyoming corporation located in Utah and China), each taking a 50% ownership position.⁴ Dr. She and IMSI Medical Inc. (IMSI), of which Faulkner is the majority owner, each have a 50% ownership interest in HLIC. Pursuant to the parties' agreement, Faulkner would manage the U.S. operations (consisting primarily of sales, research and development activities), and Dr. She would manage the China operations (consisting primarily of manufacturing and order fulfillment activities).⁵ It is alleged that in late 2017 and/or early 2018, Dr. She became less engaged in HLIC due to alleged health and family issues.⁶ Beginning in November 2017, there were intermittent production problems, equipment breakdowns and personnel issues in the Chinese manufacturing plant that were affecting HLIC's fulfillment orders.⁷ By May 2018, the situation reached a point where no open orders were being filled for HLIC customers outside of China.⁸ In fact, by August 2018, HLIC was in danger of defaulting on firm orders in excess of \$1.8 million dollars.⁹ It is alleged all of Faulkner's requests for information regarding HLIC's China operations have been ignored.¹⁰ Notably, around that same time period, Dr. She announced his interest in selling his HLIC shares to a private entity group in Shanghai known as Juliu.¹¹

³ See ECF No. 23-1 at ¶2.

⁴ *Id.* at ¶3.

⁵ *Id.*

⁶ *Id.* at ¶7.

⁷ *Id.* at ¶11.

⁸ *Id.* at ¶12.

⁹ *Id.* at ¶14.

¹⁰ *Id.* at ¶17.

¹¹ *Id.* at ¶7.

In June 2018, IMSI and HLIC filed a complaint in the U.S. District Court of Utah, alleging breach of fiduciary duty against Dr. She due to his failure to fill orders for HLIC customers outside of China and his failure to communicate with HLIC regarding business issues.¹² Two months later in August 2018, Dr. She filed an action and Motion for Temporary Restraining Order (TRO) in the U.S. District Court for the District of Wyoming.¹³ Dr. She alleges Gloria Faulkner, in cooperation with Faulkner, Elliott Faulkner and Aaron Faulkner, created and operate Estrella Medical, LLC (Estrella), and that Estrella is misappropriating HLIC's resources, including sharing employees, office space and even some intellectual property. In his action, Dr. She raises allegations of mismanagement and misappropriation, and seeks access to books and records of HLIC.¹⁴ According to Dr. She, he has entered into a sales agreement for the sale of his shares in HLIC to Juliu, and as part of the agreement he must conduct due diligence.

All Defendants filed motions for change of venue requesting the matter be transferred to the U.S. District Court of Utah.¹⁵ The court granted the motion for change of venue, but deferred ruling on the TRO.¹⁶ This court denied Dr. She's request for a TRO and injunction on September 12, 2018, without prejudice; Dr. She lives in China and was unable to attend the scheduled evidentiary hearing.¹⁷ Thereafter, Dr. She served discovery requests seeking "the

¹² See ECF Nos. 15 and 30; *see also* Case No. 2:18-cv-00484-BCW.

¹³ See ECF No. 1.

¹⁴ ECF No. 2.

¹⁵ See ECF Nos. 15 and 20.

¹⁶ ECF No. 30.

¹⁷ ECF No. 55.

financial records of HLIC from January 2012 to the present.”¹⁸ Defendants produced responsive documents from January 2015 to the present, designating some documents “Attorneys’ Eyes Only.”¹⁹ Dr. She argues that as President and half owner of HLIC he is entitled to receive and review the financial records of HLIC. This motion followed.

DISCUSSION

“Attorney’s-eyes-only protection is usually employed to protect against business harm that would result from disclosure of sensitive documents to a competitor.”²⁰ Here, Dr. She argues that as an officer and director of the company, he is not a competitor and is thus entitled to the financial information at issue.²¹ Accordingly, he asks that the “Attorney’s Eyes Only” designation be removed and the documents be redesignated as “Confidential.” Defendants argue that Dr. She is requesting the financial information for an improper purpose. Specifically, Dr. She has admitted he seeks access to the records so he can conduct due diligence in his effort to sell his share of the stock to Juliu.²² Given the procedural history in this case, and the allegations made by the parties in both the Wyoming and Utah action, it appears there is serious “bad blood” between Dr. She and the Defendants. It is alleged Dr. She, to orchestrate his sale to Juliu, has ceased communicating with Faulkner and/or performing any manufacturing as well as order fulfillment activities for HLIC. Cannibalizing one’s own company is not typical behavior of an officer and/or director. In fact, after commencing a separate action in Wyoming, Dr. She was

¹⁸ ECF No. 82-1.

¹⁹ *Id.*

²⁰ *Velocity Press, Inc. v. Key Bank, N.A.*, 2:09-cv-520, 2011 WL 5322415 at *1 (D. Utah Nov. 3, 2011) (citation omitted).

²¹ ECF No. 82.

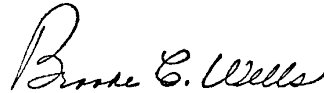
²² ECF No. 1 at ¶¶ 61, 71-74.

even unwilling to appear for the evidentiary hearing for the TRO he requested. This court is concerned about Dr. She's motives, as well as its ability to stop Dr. She, a Chinese national residing in China, from giving the "Attorney's Eyes Only" designated documents to Juliu or any other competitors. Under the current designation, Dr. She can still provide the records at issue to an expert accountant to conduct the due diligence for the sale, or as Defendants have offered—he may review the documents in the Defendants' offices. This seems sound and reasonable to the court. Accordingly, the request to remove the "Attorney's Eyes Only" designation is DENIED.

ORDER

For the reasons set forth above the Court DENIES Plaintiffs' Short Form Discovery Motion to Remove Attorney's Eyes Only Designation. [ECF No. 82].

DATED this 26 December 2018.

A handwritten signature in cursive script, reading "Brooke C. Wells".

Brooke C. Wells
United States Magistrate Judge